

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of APRIL BERNADETTE MARIE
DAILEY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WILLIAM G. DAILEY,

Respondent-Appellant.

UNPUBLISHED
November 21, 2006

No. 270003
Saginaw Circuit Court
Family Division
LC No. 05-029624-NA

In the Matter of SIEONNA LOUISE GEORGE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BONNIE KATHLEEN DAILEY, f/k/a BONNIE
KATHLEEN FOWLER,

Respondent-Appellant.

No. 270004
Saginaw Circuit Court
Family Division
LC No. 05-029625-NA

In the Matter of DUSTIN GLENN FOWLER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

BONNIE KATHLEEN DAILEY, f/k/a BONNIE
KATHLEEN FOWLER,

No. 270005
Saginaw Circuit Court
Family Division
LC No. 05-029626-NA

Respondent-Appellant.

Before: O'Connell, P.J., and White and Markey, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right from the trial court orders terminating their parental rights to the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j). Because April was determined to be an Indian child, respondent father's parental rights to her were also terminated pursuant to 25 USC 1912(f). We affirm.

The trial court did not clearly err by terminating the parental rights of respondent father to April. In order to terminate parental rights to an Indian child, it must be shown beyond a reasonable doubt, by evidence including the testimony of qualified expert witnesses, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. 25 USC 1912(f); MCR 3.980(D). A statutory ground for termination under state law must also be established by clear and convincing evidence. *In re SD*, 236 Mich App 240, 246; 599 NW2d 772 (1999). A decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The evidence, including the testimony of tribal expert Jamie Moran, established beyond a reasonable doubt that the continued custody of April by respondent father was likely to result in serious physical or emotional harm to her. 25 USC 1912(f). Ms. Moran concurred with the judgment of the Tribal Child Welfare Committee, which reviewed April's case and supported the termination of respondent father's parental rights. That judgment is well supported in the record, which includes the testimony of April's foster sister concerning April's disclosure of sexual abuse by respondent father. During her psychological evaluation by David Breyer, April indicated issues with her father, but stated that she could not tell because her father said if she talked about it, family members would go to prison. Throughout therapy with Mr. Breyer, she consistently maintained the position that she would not say anything that would get her family members, and specifically respondent father, in trouble. April's drawings and personality test showed a high indication of digital penetration and fondling occurring, most likely from adult to child. Respondent father had been convicted of fourth-degree criminal sexual assault involving another child under the age of 13, but denies committing that crime. He would require several years of intensive therapy before his therapist would be comfortable putting children in his care. This record supplies evidence beyond a reasonable doubt that April is likely to suffer physical and emotional harm if she is placed in the care of respondent father, and the trial court did not clearly err in so finding.

The same evidence equally supports the state grounds for termination set forth in MCL 712A.19b(3)(b)(i), (g), and (j). The trial court did not clearly err by finding clear and convincing evidence of the state statutory grounds for termination.

The trial court also did not clearly err by finding that the statutory grounds for termination of respondent mother's parental rights were established by clear and convincing evidence. The evidence was sufficient to clearly and convincingly establish that respondent mother inflicted sexual abuse on Sieonna, MCL 712A.19b(3)(b)(i), and allowed respondent father to abuse her as well, MCL 712A.19b(3)(b)(ii). Sieonna's own testimony of frequent sexual abuse by respondents is consistent with her revelations to her foster parents and to her therapist, as well as those made in a forensic interview. Sieonna's therapist, Christine Presnikovs, who was qualified as an expert in dealing with issues of sexual abuse in children, testified that Sieonna's behaviors were consistent with those of a child who has been sexually abused. Respondents' suggestion that the allegations against them represent transference of abuse that Sieonna suffered at the hands of her biological father in West Virginia was firmly rejected by Ms. Presnikovs. The child's affect when making disclosures and her ability to relate how she felt were not consistent with implanted memories. Further, the manner of Sieonna's revelations, coming several months after her initial psychological evaluation, was consistent with experiencing frequent sexual abuse. David Breyer¹ testified that he would not necessarily expect her to reveal daily sexual abuse in a psychological evaluation, but that this would come out more clearly in an ongoing therapeutic environment. If a child grew up in a home where sexual abuse was normalized, she would probably not bring it up. Further, information concerning abuse by a primary caregiver would sometimes take longer to come out. This record strongly supports the conclusion that respondent mother sexually abused Sieonna and allowed respondent father to do so. Contrary to the assertions of respondents on appeal, the conclusion is not based solely on the child's testimony, but on testimony by her foster parents, her therapist, Mr. Breyer, and Ms. May, a forensic interviewer.

Respondents' argument that the trial court should not have believed Sieonna warrants no relief on appeal. The trial court expressly considered issues of credibility and concluded that it believed Sieonna where her testimony was in conflict with that of respondent mother. The trial court's credibility determination is given deference on appeal, *Miller, supra* at 337, and its judgment appears wholly justified in the record. Sieonna's testimony and statements to various people were quite consistent with one another, and her manner and sequence of revelation was consistent with the experiences of abuse that she described. On the other hand, much of respondent mother's testimony was, as the trial court commented, "absolutely incredible." Her testimony contained numerous contradictions on its face and also conflicted with that of more credible witnesses, including providers of services for the family. Other aspects of respondent mother's testimony, although not actually contradictory, were so illogical or incongruous as to be patently incredible. In short, respondent mother's testimony left an impression of being

¹ Mr. Breyer was qualified as an expert by stipulation of the parties without specification of his area of expertise. The court noted that he had been qualified numerous times as an expert in the field of psychology. Mr. Breyer testified that he has seen thousands of people, and has evaluated "a lot" of child victims of sexual abuse.

thoroughly untrustworthy. The trial court did not clearly err by believing the statements of Sieonna over those of respondent mother and finding that respondent mother had sexually abused her daughter and allowed respondent father to do so. Further, given respondent mother's denial of any sexual improprieties, there is no reason to expect that she would behave differently in the future, and the trial court did not clearly err by finding that there was a reasonable likelihood that Sienna would suffer similar abuse in the future if placed in her mother's care.

Termination of respondent mother's parental rights to Dustin was also appropriate under MCL 712A.19b(3)(b)(i) and (b)(ii). Based upon the evidence, much of which we have already noted, the court was amply warranted in finding that respondent mother sexually abused Dustin's sibling and had the opportunity to prevent sexual abuse of the sibling but failed to do so. *Id.* The court also did not clearly err by finding that there was a reasonable likelihood that Dustin would suffer sexual abuse in the foreseeable future if placed in the home. Respondent mother's sexual abuse of Sieonna, as well as her failure to protect her, is probative of how she will treat other children. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). We also note substantial evidence that respondent mother continued to have contact with respondent father, who was convicted of fourth-degree criminal sexual conduct involving a child under the age of 13. This record supplies ample evidence that there is a reasonable likelihood that Dustin would be sexually abused by respondent mother or others if returned to her care, and the trial court did not clearly err by so finding.

The same evidence supporting the termination of respondent mother's parental rights to both children under statutory subsections MCL 712A.19b(3)(b)(i) and (b)(ii) equally supports the trial court's conclusion that respondent mother failed to provide proper care and custody for them and will not be able to do so within a reasonable time considering the ages of the children, MCL 712A.19b(3)(g), and that there is a reasonable likelihood that they would be harmed if placed in the care of respondent mother. MCL 712A.19b(3)(j).

The trial court did not clearly err by finding that termination of both respondents' parental rights was in the best interests of the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence depicted parental behavior so depraved that it is difficult to imagine that any rehabilitation is possible. In any event, the record indicated that respondent father would require several years of intensive therapy before a child could be placed in his care. Such treatment was not underway, as respondent father had been terminated from therapy for failure to attend. Respondent mother's prospects for rehabilitation appeared at least equally dim, as she denied any knowledge of a problem in her thoroughly incredible testimony. On this record, there is no basis from which a trier of fact could have concluded that the termination of respondents' parental rights was clearly contrary to the best interests of the children.

We affirm.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jane E. Markey